UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS LAREDO DIVISION JURY

DANNY WILLIAMS	& & &
VS	§ CIVIL NO. 5:08-CV-00131
P.A.M. TRANSPORT, INC. AND LISTER MCCOLLISTER	9 & &

DEFENDANT P.A.M. TRANSPORT, INC.'S MOTION FOR SUMMARY JUDGMENT AND BRIEF IN SUPPORT THEREOF

TO THE HONORABLE JUDGE OF SAID COURT:

Now come P.A.M. TRANSPORT, INC., ("PAM"), one of the defendants in the above-styled and numbered cause, and pursuant to Federal Rule of Civil Procedure 56 and *Local Rules Tex.* (S.D.), Rule 6 (1994), files this Motion for Summary Judgment, and asks the court to render partial summary judgment against the plaintiff. Defendant respectfully shows the court the following:

A. Introduction

- 1. Plaintiff is Danny Williams ("Williams"). Defendants are PAM and David McCollister ("McCollister"). ¹
- 2. On August 15, 2008, plaintiff filed his lawsuit. Plaintiff sued McCollister, the driver, for negligence, and PAM for failure to train, negligent hiring, failure to ensure reasonable care, and negligent supervision. On September 29, 2008, PAM filed an answer and McCollister filed his answer on January 4, 2009.

¹ McCollister was incorrectly named Lister McCollister.

3. PAM files this motion for partial summary judgment on plaintiff's causes of action for failure to train, negligent hiring, failure to ensure reasonable care, and negligent supervision. Summary judgment should be granted in this case because as a matter of law, plaintiff does not have a cause of action for failure to train, negligent hiring, failure to ensure reasonable care, and negligent supervision against PAM.

B. Background

- 4. On January 5, 2007, an accident occurred involving Williams and McCollister. Defendant, PAM, is the owner of the tractor operated at the time of the accident by its employee, McCollister. Plaintiff sued PAM for failure to train, negligent hiring, failure to ensure reasonable care, and negligent supervision.
- 5. Attached as Exhibit 1 is the stipulation made by PAM regarding its vicarious responsibility for McCollister's alleged acts/omissions at the time of the accident in question. Attached as Exhibit 2 are relevant parts to the deposition of Roger Allen, who is Plaintiff's expert. Exhibits 1 and 2 are submitted as evidence in support of this motion.

C. Standard of Review for Summary Judgment

6. The burden of proof in a summary judgment proceeding is one of the same party who would bear the burden of proof at trial. Fed. R. Civ. P. 56(c); *Celotex Corp. V. Catrett*, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 2552 (1986). The district court must resolve all reasonable doubts about the facts in favor of the non-movant. *Hom v. Squire*, 81 F.3d 969, 973 (10th Cir. 1996); *Pocchia v. NYNEX Corp*, 81 F.3d 275, 277 (2nd Cir. 1996). Therefore, the movant for summary judgment must prove there is no genuine issue about any material fact and that it is entitled to judgment as a matter of

law. Fed. R. Civ. P. 56(c) *Irby v. Bittick*, 44 F.3d 949, 953, (11th Cir. 1995). It may also satisfy its burden by negating the existence of a material element of the Plaintiff's claim. *Celotex*, 477 U.S. at 322-25, 106 S. Ct. 106 at 2552-54.

D. Argument & Authorities

As a Matter of Law There is No Cause of Action for Failure to Train, Negligent Hiring, Failure to Ensure Reasonable Care, and Negligent Supervision

- Defendants' motion for summary judgment as a matter of law is based on the rule of law that when an entity is sued for the acts of its employee, that entity cannot, as a matter of law, be held liable for independent torts if it is vicariously liable for the employee's alleged tort. *Estate of Arrington v. Fields*, 578 S.W.2d 173, 175 (Tex. Civ. App.—Tyler 1979, writ ref'd n.r.e.); *Rosell v. Central West Motor Stages, Inc.*, 89 S.W.3d 643, 654 (Tex. App.—Dallas 2002, pet denied).
- training or retaining are based on direct liability, not vicarious liability. *Morris v. JTM Materials*, 78 S.W.3d 28, 49 (Tex. App. Fort Worth 2002, no pet). When the tort of the employee is involved, however, the employer's liability for ordinary negligence is established under the doctrine of *respondeat superior*. *See Rosell*, 89 S.W.3d at 654. So, if the employer is sued for an independent act of negligence for example "negligent entrustment" that cause of action does not survive if there is *respondeat superior* liability for the act of the employee, and if the employer stipulated to vicarious responsibility. *Estate of Arrington*, 578 S.W.2d at 175; *Rosell*, 89 S.W.3d at 654; see also LaBella v. Charlie Thomas, Inc., 942 S.W.2d 127, 137, n.9 (Tex. App.—Amarillo 1997, writ denied); *Dieter v. Baker Serv. Tools, Inc.*, 739 S.W.2d 405, 408 (Tex. App.—Corpus Christi 1987, writ denied). When the employer asserts vicarious responsibility

(e.g., stipulates that it is vicariously liable for the acts/omissions of its employee, if any), evidence of the independent acts/omissions of the employer is limited to a gross negligence allegation. *Estate of Arrington*, 578 at 175. That is so because the derivative liability of the employer through the theory of *respondeat superior* has already been established by a stipulation of vicarious liability — at which point the competence or incompetence of the employee and the care exercised in his employment are immaterial issues. *Id.* at 178. The employer is liable for the acts of his employee whether the servant is competent or not. *Id*.

9. In this case, Plaintiff alleged that PAM did not properly train McCollister, and that it did not use ordinary care in hiring and supervising its employees. Claims for "negligent hiring", "negligent retention," "negligent supervision" and "negligent training" are based on the action taken by the employer with respect to a given employee that creates an unreasonable risk of harm to others. See, e.g., Deerings West Nursing Center v. Scott, 787 S.W.2d 494, 496 (Tex. App. - El Paso 1990, writ den.) (analogizing nursing home's liability for hiring unlicensed and potentially unfit nurse to vehicle owner's liability for entrusting vehicle to unlicensed and unfit driver); Yeager v. Drillers, Inc., 930 S.W.2d 112, 117 (Tex. App.--Houston [1st Dist.] 1996, no writ); Leake v. Half Price Books, Records, Magazines, Inc., 918 S.W.2d 559, 563 (Tex. App. -- Dallas 1996, no writ); Peek v. Equipment Services, Inc., 906 S.W.2d 529, 534 (Tex. App. -- San Antonio 1995, no writ); Porter v. Nemir, 900 S.W.2d 376, 385-387 (Tex. App. — Austin). To be actionable, the plaintiff must first prove that the employee committed an actionable tort. Gonzales v. Willis, 995 S.W.2d 729 (Tex. App. — San Antonio 1999, no pet). These types of claims, however, are based on direct liability when no vicarious

<u>See LaBella v. Charlie Thomas, Inc.</u>, 942 S.W.2d 127, 137, n.9 (Tex. App.— Amarillo 1997, writ denied), see also Dieter v. Baker Serv. Tools, Inc., 739 S.W.2d 405, 408 (Tex. App.—Corpus Christi 1987, writ denied). Thus, if a defendant asserts vicarious liability (e.g., stipulates that it is vicariously liable for the acts of its employee), information regarding negligent hiring (retention or training) is limited to the issue of punitive damages. Estate of Arrington v. Fields, 578 S.W.2d 173, 175 (Tex. Civ. App.— Tyler 1979, writ ref'd n.r.e.). This means that unless the claim for negligent hiring, retention or training is accompanied by a claim for gross negligence/malice against the employer, the negligent claims are not actionable if the employer is responsible vicariously for the acts of the driver/employee.

10. In this case, plaintiff <u>did not sue PAM</u> for gross negligent training, gross negligent hiring, and/or gross negligent supervision.² Accordingly, pursuant to the holding in *Estate of Arrington*, the negligent hiring, training, supervision and lack of reasonable care asserted against PAM, and its vicarious liability under *respondeat superior*, are mutually exclusive modes of recovery if course and scope of employment has been established, and only ordinary negligence has been pled. *Estate of* Arrington, 578 S.W.2d at 178. That is so because the derivative liability of the PAM is already been established by a stipulation of *vicarious liability* (Exhibit 1) -- at which point the competence or incompetence of the employee and the care exercised in his employment are immaterial issues. *Id.* at 178. PAM will be liable for the acts/omissions of its employee, if any, whether the employee is competent or not. *Id.*; *see also Rosell*,

² There is no claim for gross negligence against PAM and there is no evidence of gross negligence on the part of PAM for any of these acts/omissions. In fact, in the deposition of Roger Allen, plaintiff's expert, opposing counsel stated that she was not alleging gross negligence against PAM. See pages 185, line 2 to page 186, line 1

Inc., 89 S.W.3d at 654.

11. Based on the above, PAM, who is vicariously liable for the acts/omissions of McCollister under the theory of *respondeat superior*, is entitled to summary judgment as a matter of law on the negligent training, negligent hiring, negligent in ensuring reasonable care, and/or negligent supervision causes of action against it. Therefore, Defendant PAM asks the court to summarily dismiss the causes of action for negligent training, hiring, supervision, or lack of reasonable care against it. See Estate of Arrington, 578 S.W.2d at 175.

As a Matter of Law There is No Cause of Action for Failure to Exercise Reasonable Care Independent from Negligence

- 12. Plaintiff has also alleged that PAM failed to exercise reasonable care from causing an unreasonable risk of harm to others.
- 13. The duty of ordinary care is the duty to use the degree of care that a reasonably careful person would use to avoid harm to others under circumstances similar to those faced by the actor. *Mitchell v. Missouri-Kansas-Texas R. Co.*, 786 S.W.2d 659, 663 (Tex. 1990). The determination of the unreasonable dangers of harm to others that require ordinary care is a function of reasonableness that is, what the ordinarily prudent person could foresee that harm was a likely result of a condition, then it is a danger. *Rosas v. Buddies Food Store*, 518 S.W.2d 534, 537 (Tex. 1975).
- 14. When dealing in the context of an employer's duty to third persons, a cause of action such as the one alleged by plaintiff herein arises when an employer exercises some control over an incapacitated employee (e.g., a drunk employee), and the employer assumes the duty to act as a reasonably prudent employer would under the same or similar circumstances to prevent the off-duty employee from causing an

unreasonable risk of harm to others. *Otis Engineering Corp. v. Clark*, 668 S.W.2d 307, 311 (Tex. 1983). The employer must have knowledge of the employee's incapacity and he must exercise some affirmative action to control the employee. *Ianni v. Loram Maint. Of Way, Inc.*, 16 S.W.3d 508, 514 (Tex. App. – El Paso 2000, pet. denied).

15. Such cause of action is not viable in this case for two reasons. First, McCollister was not off duty when the accident occurred – he was in the course and scope of his employment with PAM. See Exhibit 1. Second, PAM is vicariously liable for the torts, if any, of McCollister by virtue of its stipulation of vicarious responsibilty. Accordingly, PAM is entitled to summary judgment as a matter of law on Plaintiff's allegations that it failed to exercise reasonable care from causing an unreasonable risk of harm to others.

F. Conclusion

- 1. PAM is entitled to summary judgment as a matter of law on the causes of action asserted against it because PAM is already vicariously liable for the alleged acts/omissions of its employee, David McCollister.
- 2. Based on the above, summary judgment on plaintiff's cause of action for negligent entrustment should be in all things granted.
- 3. The filing of this motion was discussed with Lashone Fleming-Bruce, one of the attorneys for Plaintiff, on May 15, 2009. The motion is opposed by virtue of Ms. Fleming-Bruce not making a comment to the same.

WHEREFORE, PREMISES CONSIDERED, PAM prays that the court grant this motion and award summary judgment in its favor on the issue of negligent in hiring, supervising, training, retaining, McCollister or that it violated the standard of reasonable

care, and for such other and further relief, at law or in equity, to which it may show itself justly entitled.

Respectfully submitted,

THE ALVAREZ LAW FIRM, P.C. 415 Shiloh, Suite A Laredo, Texas 78045 956/722-6601 956/722-1527 (fax)

PATRICIA O. ALVAREZ

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State Bar No. 24048717

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I certify that on the 24th day of May, 2009, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Dana T. Williams State Bar No. 00794852 THE WILLIAMS FIRM, P.C. 4201 F.M. 1960 West, Suite 455 Houston, Texas 77068 LaShon Fleming-Bruce
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12777 Jones Road, Suite 110
Houston, Texas 77070

PATRICIA O. ALVAREZ

EXHIBIT 1

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS LAREDO DIVISION **JURY**

DANNY WILLIAMS *๛๛๛๛๛๛๛๛*

VS. CIVIL NO. 5:08-CV-00131

P.A.M. TRANSPORT, INC. AND LISTER MCCOLLISTER

DEFENDANT'S STIPULATION OF EMPLOYMENT

Now comes P.A.M. TRANSPORT, INC. ("PAM"), a defendant in the above-styled and numbered cause, and files this stipulation and admission relating to the employment relationship between PAM and David McCollister ("McCollister").

Stipulation Regarding Employment Relationship A.

- 1... PAM purposefully, and voluntarily consents and stipulates that McCollister was acting as an employee of PAM on January 5, 2007, at the time of the accident made the basis of the above numbered styled and cause of action ("Incident in Question"). For purposes of this Stipulation, PAM agrees that the term "Employee" as used throughout this Stipulation, shall be defined pursuant to the Texas law as a "person in the service of another with the understanding, express or implied, that such other person has the right to direct the details of the work not merely the result to be accomplished."
- 2. PAM purposefully, and voluntarily consents and stipulates that at the time of the Incident in Question McCollister was acting in the scope of his employment for

PAM. For purposes of this stipulation, PAM agrees that an employee is "acting in the scope of his employment" if he is acting in furtherance of the business of his employer as defined by Texas law.

3. Finally, PAM knowingly, purposefully, and voluntarily consents and stipulates that it is vicariously responsible for the acts and/or omissions, if any, of McCollister for the Incident in Question.

Respectfully submitted,

THE ALVAREZ LAW FIRM, P.C.

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Federal ID No. 627245

ATTORNEYS FOR DEFENDANTS

EXHIBIT 2

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS LAREDO DIVISION 1

DANNY	WILLIAMS)		
)		
)		
VS.)	CIVIL N	10.
)	5:08-C	7-00131
P.A.M.	TRANSPORT,	INC.	AND)		
LISTER	MCCOLLISTER	₹)		

ORAL AND VIDEOTAPED DEPOSITION OF

Roger Charles Allen

MAY 15, 2009

ORAL AND VIDEOTAPED DEPOSITION OF ROGER CHARLES
ALLEN produced as a witness at the instance of the
Defendant and duly sworn, was taken in the
above-styled and numbered cause on the 15th day of
May, 2009, from 9:51 a.m. to 3:45 p.m., before

Jessica R. Benson, Certified Shorthand Reporter in
and for the State of Texas, reported by computerized
stenotype machine at the offices of RGK Consultants,
211 E. Parkwood, Suite 110, Friendswood, Texas,
pursuant to the Federal Rules of Civil Procedure and
the provisions stated on the record or attached
hereto.

Videotaped Deposition of Roger Allen

2 (Pages 2 to 5)

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4		RLES ALLEN		THE WILLIAMS FIRM, P.C.
5			5	4201 F M. 1960 West, Suite 455 Houston, Texas 77068
6		y Ms. Alvarez	6	TELEPHONE: (281)440-8928
"		tificate 221	7	EMAIL; dwilliams@wms-firm.com
7	reporter's Cor	tiricate	8	Ms. LaShon Fleming-Bruce THE FLEMING-BRUCE LAW FIRM. P.L. L. C
8				12777 Jones Road, Suite 110
9		EXHIBITS	9	Houston, Texas 77070 TELEPHONE: (281)469-9090
10		LAIIDH S	10	` '
11	No. 1 Not	ice of Deposition 7	11	COUNSEL FOR DEFENDANTS:
12		ume 26		Ms. Patricia O. Alvarez
13		kSafe America Information 34	12	THE ALVAREZ LAW FIRM, P C 415 Shiloh Dr , Suite A
14		osition and Trial Testimony 45	13	Laredo, Texas 78045
15			14	TELEPHONE: (956)722-6601 FAX: (956)722-1527
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9		ctor-Trailer Driver Handbook 129	9	(page 170, line 6)
10 11		nper to Bumper Excerpt 132 ord of Road Test 134	10	No. 3 I want to know the particulars upon which
12		M. Transport Driver's Manual 135	11	you base your opinion that Mr. McCollister
13		id-drawn Diagram 156	12	was not looking out for pedestrians,
14		ana Commercial Driver's License	13	bystanders, or co-drivers
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15	1030 13	100	15	No. 4 You just did not consider the fact that
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18		Allen's Calculations 210	19	(page 192, line 18)
19			20	No. 5 Again, sir, can you please tell me what
20			21	analysis of the evidence you performed,
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DATASCOPE 713-688-9300

Videotaped Deposition of Roger Allen

47 (Pages 182 to 185)

182 standards of a commercial driver and he had been to the lookout for pedestrians, bystanders, or control the lookout for pedestrians, bystanders, or co-drivers, this actident would not have occurred and banny Williams would not have been hit" and the bobtail ran over. Do you see that? 7 Q. On page 4, sir, of your report. "All pode that are hazards and to never assume someone is out of the way." So, my question to you is: What pedestrians are hazards and to never assume someone is out of the way." So, my question to you is: What podestrians are hazards and to never assume someone is out of the way." So, my question to you is: What podestrians are hazards and to never assume someone is out of the way." So, my question to you is: What podestrians are hazards and to never was in his way? 12 Mr. McCollister assumed that no one was in his way? 13 A. He backed into the place without making sure that there was nobody in the way of his truck. 15 a potential of being in the way of his truck. 15 a potential of being in the way of his truck. 16 Q. And you're snying that he backed up—not back away — backed up, correct, and he wasn't— 15 a potential of being in the way of his truck. 16 Q. And you're snying that he backed up—not back away — backed up, correct, and he wasn't— 17 a. A. I has't some wasn't tooking in his mirrors? He— 18 potential of being in the way of his truck. 19 A. J didn't say be wasn't tooking in his mirrors? He— 10 Q. (By Ms. Alvarez) Okay. Properly. So, he wasn't using his mirrors you said. 10 Q. (By Ms. Alvarez) Okay. Properly. So, he wasn't using his mirrors you said. 11 Q. (By Ms. Alvarez) Okay. Properly. So, he wasn't using his mirrors you said. 12 Q. (By Ms. Alvarez) Okay. Properly. So, he wasn't using his mirrors you said. 13 Q. (By Ms. Alvarez) Okay. Properly. So, he wasn't using his mirrors you said. 14 Q. (By Ms. Alvarez) Okay. Properly. So, he wasn't using his mirrors you said. 15 Q. (By Ms. Alvarez) Okay. Properly. So, he wasn't using his mirrors you said. 16 Q. (By Ms. A			,	47 (Pages 182 to 185)
the lookout for pedestrians, bystanders, or a chrivers, this accident would not have occurred and a Danny Williams would not have been hit" and the bobtail ran over. Do you see that? A. What page are you on, ma'am? Q. On page 4, sir, of your report. "All pedestrians are hazards and to never assume someone is out of the way." So, my question to you is: What basis do you state than HeCollister — 12 basis do you state than HeCollister — 13 basis do you state than HeCollister — 14 basis do you state than HeCollister — 15 an optential of heing in the way of his truck or 15 an optential of heing in the way of his truck or 15 an optential of heing in the way of his truck or 16 do, and you're saying that he backed up — not 17 back away — backed up, correct, and he wasn't 18 looking at his mirrors? He — 18 looking at his mirrors? He — 19 A. I didn't say be wasn't looking in his mirrors? He — 19 A. I didn't say be wasn't looking in his mirrors? He — 19 A. I didn't say be wasn't looking a his mirrors? He — 19 A. I didn't say be wasn't looking a his mirrors? He — 19 A. I didn't say be wasn't looking a his mirrors? He — 19 A. I didn't say be wasn't looking a his mirrors? He — 19 A. I didn't say be wasn't looking a his mirrors? He — 19 A. I didn't say be wasn't looking a his mirrors? He — 19 A. I didn't say be wasn't looking a his mirrors? He — 19 A. I didn't say be wasn't looking a his mirrors? He — 19 A. I didn't say be wasn't looking a his mirrors you said. Q. Okay. Not using the mirrors you said. Q. Okay. Not using his mirrors. My God, how many lift to right, the look had didn't on how do you know that he was not acting in a safe way. 185 Q. Okay. Not wasn't using his mirrors. My God, how many lift to right, the look had didn't on how do you know that he was not acting in a safe way. 185 Q. Okay. Not wasn't using his mirrors. My God, how many lift to right, the long had he wasn't said befo		182		184
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bobtail ran over. Do you see that? A. What page are you on, ma'am? Q. On page 4, sir, of your report. "All commercial drivers know or should know that pedestrians are hazards and to never assume someone is out of the way." So, my question to you is: What podestrians are hazards and to never assume someone is out of the way." So, my question to you is: What pedestrians are hazards that the Collister — Mr. McCollister assume that the commercial drivers know or should know that pedestrians are hazards and to never assume someone is out of the way." So, my question to you is: What pedestrians are that there was nobody in the way of his truck. A. He backed into the place without making a part that there was nobody in the way of his truck. Q. And you're saying that he backed up — not back and you be that in the was not of a potential of being in the way of his truck. Q. And you're saying that he backed up — not back and you be that he wasn't looking in his mirrors? He — 18 I tooking at his mirrors? He — 18 Mr. McCollister, was gross negligence, and 'I'm going to repeat what you just told me. When a driver knew that he was not acting in a safe way. A. That's correct. Q. Is that your definition? A. I didn't say he wasn't looking in his mirrors? A. I didn't say he wasn't looking in his mirrors you said. Mr. McCollister, was gross negligence, and 'I'm going to repeat what you just of the way. A. That's correct. Q. Is that your definition? A. That's norted. A. I didn't say he wasn't looking in his mirrors you said. In this case here, he didn't make sure that there was proved was pedestrians out of the way, and he went ahead and did it. So, he was acting unconsciously, endangering anybody that surrounded him. Q. Not using this mirrors you said. A. I said he wasn't using his mirrors properly. A. I said he wasn't using his mirrors A. That's correct. Q. Nay. So, how do you know that he was not acting in a safe way. A. I said he wasn't using his mirrors properly. A. I said he wasn't using his mirrors	4		4	
6 A. What page are you on, ma'an? 7 Q. On page 4, sir, of your report. "All 8 commercial drivers know or should know that 9 pedestrians are hazards and to never assume someone 10 is out of the way." So, my question to you is: What 11 basis do you state that McCollister — 12 Mr. McCollister assumed that no one was in his way? 13 A. He backed into the place without making 14 sure that there was nobody in the way of his truck. 15 a potential of being in the way of his truck. 16 Q. And you're saying that he backed up — not back away — backed up, correct, and he wasn't 17 back away — backed up, correct, and he wasn't 18 looking at his mirrors? He — 19 A. I didn't say he wasn't looking in his 19 MS WILLIAMS: Objection, 20 MS WILLIAMS: Objection, 21 MS WILLIAMS: Objection, 22 I A. I sid he wasn't using his mirrors 23 mischaracterizes witness' prior testimony 24 A. I said he wasn't using his mirrors 25 properly. 26 Wasn't say his over? You go from left 26 wasn't using his mirrors property, correct? 27 A. That's correct. 28 MS WILLIAMS: Objection, 29 MS WILLIAMS: Objection, 20 (By MS Alvarez) Okay. Properly. So, he 20 wasn't using his mirrors property, correct? 3 A. That's correct. 4 Q. Okay. Now, tell me, what is the proper use 26 of mirrors when you're backing up? 27 around. You look in both mirrors. My God, how many times do we got to say this over? You go from left 28 backing, backing slowly. 29 collaps. A. Wall, hat's in the case. I don't — I've 20 wasn't safe. 20 A. Well, hat's in the case. I don't — I've 21 Q. Okay. That's kright? 22 La safe way that devent definition of gross 23 to relevance on this entire line of questioning. 3 A. Well, that's in the case. I don't — I've 3 and you're going to withdraw gross engligence from any over going to withdraw gross engligence from any over going to withdraw gross and to here we man to do I haven't pleed it. I'm just telling you it's objection in my office. I don't remember the 3 the cust that down in my office. I don't remember the 4 contract the legal definition is one	5	-	5	
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	1		23	
25 word for word of what it is. 25 this line of questioning because my client isn't	1	-	1	
1	25	word for word of what it is.	25	this line of questioning because my client isn't

DATASCOPE 713-688-9300

Videotaped Deposition of Roger Allen

48 (Pages 186 to 189)

	186		188
1	seeking damages for gross negligence	1	
2	A. There's a question?	1 2	he saw Mr. Williams turning away from the — my
3	Q. (By Ms. Alvarez) Yeah	3	client's tractor as he hopped towards it? MS_WILLIAMS: Objection,
1	A. What is it?	1	<u>-</u> ·
4		4 -	mischaracterizes prior testimony
5	MS ALVAREZ: Can you please repeat	5	Q. (By Ms. Alvarez) And that's at page 33 of
6	the question for me?	6	Mr. Huff's deposition. Do you agree or disagree with
7	(Whereupon the requested portion of	7	that?
8	testimony was read back.)	8	A. I have no comment about that, ma'am.
9	A. Because he wasn't looking out to make sure	9	Q. Okay. Let's talk about Mr. Walter
10	that there was no pedestrians near his vehicle when	10	Williams' testimony. Do you agree or disagree that
11	he started backing up because if he had done	11	he said that Mr. McCollister was backing up at less
12	everything that he should have been trained for, he	12	than 1 mile per hour?
13	would have been scanning the whole area; and he	13	A. I don't see how he can be a judge of that.
14	didn't do it.	14	As I previously stated, for a reverse gear, it allows
15	Q. (By Ms. Alvarez) Okay. Is that it?	15	the truck to go between 1 and 3 mile an hour. Being
16	A. I think that's what I've been saying all	16	less than 1 mile an hour, I don't know. It's
17	day, ma'am.	17	recommended that you idle. I don't know, ma'am.
18	Q. Now, you agree with Mr let me ask you.	18	Q. Do you agree or disagree with Mr. Walter
19	Do you agree or disagree with Mr. Huff's testimony	19	Williams, another independent witness, when he said
20	that he saw four-way blinkers on before	20	that he heard a honk before Mr. McCollister started
21	Mr. McCollister's truck approached the parking	21	backing up?
22	space — the empty parking space?	22	A. That isn't what I understand. I understood
23	A. I don't agree. I don't disagree. It	23	the honk to be just prior to Mr. Williams being run
24	doesn't matter. They would not have been visible to	24	over.
25	Mr. Williams because Mr. Williams was approaching the	25	Q. Do you - so, you don't agree with
	187		189
1	truck from an angle and he wouldn't have been visible	1	Mr. Williams Mr. Walter Williams on that, do you?
2	to him and, also, with it being daylight, the	2	MS WILLIAMS: Objection,
3	four-way flashers is not going to be that visible.	3	mischaracterizes witness' prior testimony
4	Q. Do you agree or disagree with Mr. Huff's	4	Q. (By Ms. Alvarez) Page 16 and 17 of his
5	testimony that he saw Mr. McCollister turn to the	5	deposition. Did you read it?
6	right mirror and then to the left mirror as he was	6	A. I read his deposition, ma'am.
7	backing up?	7	Q. So, you don't agree with Walter Williams,
8	A. I don't know. I know that's what he said;	8	that he heard a honk before Mr. McCollister started
9	but if he was using his mirrors properly, then he	9	backing up, correct?
10	should have seen Mr. Williams.	10	MS WILLIAMS: Same objection
11	Q. Do you agree so, you don't agree with	11	A. That's not my understanding of what the
12	that, correct?	12	honk came just prior to him being run over, not
13	A. I don't agree. I don't disagree. If he	13	before he was backing up.
14	was — if he was doing it, then he's not doing it	14	Q. (By Ms. Alvarez) Do you agree or disagree
15	properly.	15	that Mr. Walter Williams saw Mr. McCollister stopping
1.6	Q. Do you agree or disagree that — with	16	before he began backing up and honked his horn at
17	Mr. Huff that he saw Mr. Williams wisking (sic) and	17	that point?
18	singing and not paying attention?	18	MS WILLIAMS: Same objection
19	A. I don't know, ma'am. I wasn't there. And	19	A. As the truck came around, it was moving
20	with all the noise that's around a truck stop, how	20	- ·
21		21	forward. It would have had to stop before it was put
22	was he even able to hear if he was whistling and	22	in reverse. So, did the truck stop? Yes, I'm sure
Į.	singing, especially with him up inside his truck?	23	it stopped because he would have had to stop and then
23	Q. And that's your own conclusion, right?	1	place the truck in reverse.
24	A. Yes, ma'am.	24	Q. (By Ms. Alvarez) But you don't agree that
25	Q. Do you agree or disagree with Mr. Huff that	25	before it started backing up, it honked, correct?

DATASCOPE 713-688-9300

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS LAREDO DIVISION JURY

ORDER GRANTING DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

On this day came on to be considered P.A.M. Transport, Inc.'s Motion for Summary Judgment as a matter of law on the issue of negligent failure to train, negligent hiring, negligent failure to ensure reasonable care, and negligent supervision. After considering the law, the pleadings of the parties as well as the evidence, the court is of the opinion that defendant's motion should be granted.

IT IS, THEREFORE, ORDERED that Defendant's Motion for Partial Summary Judgment on the issue of negligent hiring, supervision, training, retention, and violation of the standard of reasonable care against PAM is hereby **GRANTED** as a matter of law.

SIGNED this	day of	, 2009.
		JUDGE PRESIDING